

UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
Civil Action No.

KEVIN YARBROUGH, )  
)  
)  
Plaintiff, )  
)  
v. )  
)  
)  
BUILDING MAINTENANCE )  
SERVICES, LLC; and )  
SURFACE LOGIC, LLC )  
)  
Defendants.

**NOTICE OF REMOVAL TO  
FEDERAL COURT**

Defendants Building Maintenance Services, LLC and Surface Logic, LLC (“Defendants”), by and through the undersigned counsel, respectfully remove the above-entitled action from the Superior Court of Durham County, North Carolina, to the United States District Court for the Middle District of North Carolina, pursuant to 28 U.S.C. § 1331, § 1441, and § 1446. In support of this Notice of Removal, Defendants state as follows:

1. On December 17, 2018, Plaintiff filed a Complaint in the Superior Court of Durham County, North Carolina, styled “Kevin Yarbrough v. Building Maintenance Services, LLC; and Surface Logic, LLC,” that was assigned Civil Action No. 18 CVS 004270 (“Superior Court action”). The Registered Agent for Building Maintenance

Services, LLC was served with the Summons and Complaint on or about December 20, 2018. The Registered Agent for Surface Logic, LLC was served with the Summons and Complaint on or about December 26, 2018.

2. Pursuant to 28 U.S.C. § 1446(a), a copy of all processes and pleadings served upon Defendants are attached hereto as **Exhibit A**.

3. This notice is being filed within thirty (30) days of the date of service of the Summons and Complaint in this cause on Defendants; accordingly, this Notice is timely filed pursuant to 28 U.S.C. § 1446(b). Defendants are represented by the undersigned counsel and consent to removal.

4. Plaintiff's claims for relief against Defendants in the Superior Court action are for discrimination in violation of the Uniformed Services Employment and Reemployment Rights Act, 28 U.S.C. § 4301 *et seq.* ("USERRA"), violation of the Family and Medical Leave Act, 29 U.S. Code § 2601, *et seq.* ("FMLA"), wrongful discharge in violations of public policy as articulated in N.C.G.S. § 127B-10 *et seq.* and of public policy as expressed in the Equal Employment Practices Act, N.C.G.S. § 143-422.1 *et seq.*, and in the Persons Disabilities Protection Act, N.C.G.S. § 168A-2 *et seq.*, and also for punitive damages under N.C.G.S. § 1D-1.

5. This action is being removed to Federal Court based on federal question jurisdiction in that this action purportedly arises under the laws of the United States, namely 28 U.S.C. § 4301 *et seq.* (“USERRA”), and 29 U.S. Code § 2601, *et seq.* (“FMLA”), as Plaintiff alleges that Defendants violated his rights under said statutes.

6. This action involves a civil suit for damages arising under the laws of the United States and involves federal questions. Federal jurisdiction is therefore founded upon 28 U.S.C. § 1331 and this action is removable to federal court pursuant to 28 U.S.C. § 1441. Therefore, Defendants file this notice of removal of this action from the Superior Court of Durham County, North Carolina to the United States District Court for the Middle District of North Carolina as this court has original jurisdiction over this Superior Court action.

7. Defendants contend that the United States District Court would be acting within its discretion by exercising supplemental jurisdiction over the remaining state law claims, if any, pursuant to 28 U.S.C. § 1367.

8. Written notice of filing of this Notice will be served upon the adverse party in this action as required by law.

9. Attached to this notice as **Exhibit A** are copies of the Summons and Complaint filed in the Superior Court action.

10. A copy of this Notice of Removal is being served on the Clerk of Court of Durham County, North Carolina contemporaneously with the filing of this Notice of Removal, as shown by the notice attached as **Exhibit B**.

WHEREFORE, Defendants respectfully request that this action be removed from the Superior Court of Durham County, North Carolina, to the United States District Court for the Middle District of North Carolina, and that this Court assume jurisdiction over this action, and proceed to final determination thereof.

This the 18<sup>th</sup> day of January 2019.

/s/ MEREDITH A. FITZGIBBON  
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## **CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the *Notice of Removal to Federal Court* with the Clerk of Court using the CM/ECF system and mailed the document via the United States Postal Service, postage pre-paid and addressed to:

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*Attorney for Plaintiff*

This the 18<sup>th</sup> day of January, 2019.

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